

# EXHIBIT A

**CONFIDENTIAL PURSUANT TO RULE 26(C) PROTECTIVE ORDER**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



In re

CUSTOMS AND TAX ADMINISTRATION OF THE  
KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND SCHEME  
LITIGATION

MASTER DOCKET

18-md-2865 (LAK)

**EXPERT REPORT OF GRAHAM WADE**

**December 31, 2021**

### 3. Record Date

29. This refers to the date by which a shareholder is required to own shares (meaning that the shareholder is the registered owner of the shares in the shareholder register) to be entitled to receive a dividend.<sup>35</sup> A company's board of directors typically declares a dividend, which is then ratified at a general meeting of shareholders. The board of directors also determines a Record Date for the dividend. Any holder of shares who is registered as the owner of the securities at close of business on the Record Date is paid the dividend.<sup>36</sup>

### 4. Ex-Dividend Date (or Ex-Date)

30. This refers to the first trading date on which the buyer of a share is not entitled to receive the most recently announced dividend because any purchase transactions entered into after this date will not settle prior to the Record Date.<sup>37</sup> Until October 2014, the Ex-Dividend Date for Danish securities was typically two business days before the Record Date ("Record Date - 2"). After October 2014, pursuant to changes in the European Commission's Regulation EU No 909/2014 which shortened the settlement

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<https://www.globenewswire.com/news-release/2013/11/21/591590/0/en/NASDAQ-OMX-Nordic-will-implement-T-2-settlement-on-6-October-2014.html>, accessed December 22, 2021.

<sup>35</sup> See, <https://www.investor.gov/introduction-investing/investing-basics/glossary/ex-dividend-dates-when-are-you-entitled-stock-and>, accessed December 1, 2021.

<sup>36</sup> In practice, it is typical that the client's custodian or sub-custodian is listed as the actual registered holder of shares on the register. For example, if BNP Paribas is a client's custodian, then the share register will likely include an entry of shares registered to BNP Paribas' client account. In a share transaction, if the shares have not been delivered to the buyer's custodian by close of business on the Record Date, the dividend is paid to the seller and not the buyer.

<sup>37</sup> "Once the company sets the record date, the ex-dividend date is set based on stock exchange rules ... If you purchase a stock on its ex-dividend date or after, you will not receive the next dividend payment. Instead, the seller gets the dividend. If you purchase before the ex-dividend date, you get the dividend." See, <https://www.investor.gov/introduction-investing/investing-basics/glossary/ex-dividend-dates>, accessed December 1, 2021.

to a specific counterparty on a specific date makes forwards less preferable to most market participants because they bear various risks including credit, settlement, and tax recharacterization risks.<sup>64</sup>

62. Futures are more commonly used in equity finance transactions because they are independent contracts which can be closed separately from transactions involving the underlying shares. As a result, a party in a transaction can purchase a specified quantity of shares (maintain a ‘long’ position in the shares) and sell the same quantity of shares in the futures market (maintain a ‘short’ position in the shares via futures). The party maintaining a long-stock short-future position is not obliged to sell shares to any specific buyer. As a result, the party legally owns the shares (via the long position in the shares) and fully hedges the market price risk of the trade. Note that, unlike a forward, a future can easily be closed out by entering into an offsetting future transaction, such that the owner of the shares is under no current obligation to dispose of the shares to any specific person. The other key attraction of futures is that the credit risk exposure under a future is against the clearing counterparty (generally a highly regulated and creditworthy institution) and not the person who has taken the other side of the futures contract.

### **C. Dividends and Withholding Tax in Equity Finance Markets**

#### **1. The Pricing and Economics of Equity Finance Transactions**

63. The following are the typical economic components in pricing an equity finance transaction:

- i. **Price Returns** – This refers to the difference in price of the underlying equities at the end of the transaction compared to the start. In equity financing transactions, the Cash Borrower/Securities Lender is exposed to price returns. To illustrate, in the basic secured loan transaction example, the Cash Borrower does not transfer the equities to the Cash Lender at any point during the transaction. Under agreed transaction terms, the Cash Borrower is

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<sup>64</sup> Tax recharacterization risk is the risk that starting from the date parties enter into a forward contract, a tax authority might deem the counterparty to be the owner of shares involved in the contract. From the tax authority’s perspective, the counterparty would be the tax owner of the real dividend, and not the original party.

instead required to repay the fixed cash loan principal irrespective of the price of the equities at loan maturity. Therefore, the Cash Borrower remains fully exposed to price returns. Similarly, in a sale of stock versus a futures contract transaction, the Cash Borrower disposes of the equities at the start of the transaction, eliminating the Cash Borrower's exposure to price movements in the equities. The futures contract requires the Cash Borrower to buy the equities at a fixed price on the future's expiration date irrespective of the market price, thus restoring the Cash Borrower's exposure to price returns.<sup>65</sup>

- ii. **Financing Costs** - The Cash Lender expects to earn interest on the loan made to the Cash Borrower. In a simple margin loan, the amount of interest charged is determined in the same way as a normal interest-bearing loan. In a stock loan or repo, the interest the Cash Lender earns is generally calculated in an identical way to the simple margin loan, but then embedded into the transaction. In a stock loan, the interest is included in a fee paid by the Cash Borrower to the Cash Lender. In a repo transaction, the price at which the equities are repurchased is calculated as the original sale price plus interest for the duration of the contract.
- iii. **Dividends** - Generally, equity finance transactions are structured to ensure that the economic benefit of any real dividends paid over the course of the transaction are passed to the Securities Lender. In the case of a simple loan secured with a pledge, the Securities Lender retains legal and economic ownership of the securities, and therefore directly receives the real dividend. For other transactions, a different party may receive the real dividend, so the Securities Lender needs to be compensated for the missed real dividend. This is usually by

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<sup>65</sup> See, for example, Eurex Contract Specifications for Futures Contracts, Subpart 1.6: Contract Specifications for Futures Contracts on Shares, available at [https://www.eurex.com/resource/blob/1512866/b86228baaf963f5c1b722d59f3ddd9e0/data/2019\\_04\\_08\\_cs\\_1\\_history.pdf](https://www.eurex.com/resource/blob/1512866/b86228baaf963f5c1b722d59f3ddd9e0/data/2019_04_08_cs_1_history.pdf), accessed December 30, 2021.

way of a contractual payment known as a dividend compensation payment. Alternatively, the real dividend can be included in the overall pricing of the contract, as in the case of a futures contract where compensation payments are absent, but the contract's price reflects the market's expectation of real dividends to be paid during the life of the contract.

- iv. **Other Corporate Actions** – The occurrence of certain corporate events such as mergers, rights issues, and bonus issues can also affect the pricing of equity financing transactions. Such events are outside the scope of the claims in this matter, and accordingly I do not consider them.

## **2. The Importance of Dividends in Equity Finance Transactions**

64. Share prices can be viewed as representations of the value of future cash flows earned from holding the shares. These future cash flows are primarily in the form of dividends. Therefore, a crucial component of pricing for any equity finance transaction is understanding the transaction's impact on the right to dividends.

65. While the dividend rate paid by most companies is relatively low,<sup>66</sup> any dividend compensation payments are typically an order of magnitude larger than the interest on the loan because securities financing transactions are generally short-term, resulting in low interest amounts.

## **3. Differential Tax Treatment of Various Participants in the Market and Its Impact on Pricing**

66. Tax, a fundamental component of all equity transactions, engenders both opportunities and pitfalls for the unwary, and as such requires active consideration and management.

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<sup>66</sup> In my experience, average dividend yields are around 2%, but they can vary significantly across issuers.

243. The observations I made earlier in respect of the ED&F Man Cum-Ex transactions about the size of the trades relative to the ADTV are equally applicable to Solo. It is inconceivable to me that these IDBs were genuinely able to provide instant access to liquidity equal to more than the ADTV of the shares in question.<sup>199</sup> Rather it is a further indication that these were fictitious and circular transactions which were accepted without question by all the parties because they understood the circularity of the transactions and knew they had no trading risk.

244. Additionally, all of the transactions I have reviewed were structured such that same day trades took place at exactly the same price with no bid/offer spread on any of the legs and as mentioned below, the stock loans further used the same prices as buy and sell trades conducted on previous dates irrespective of intervening price moves. Therefore, even if we were to accept that the IDBs were genuinely seeking liquidity and providing it to other of Solo's clients (via Brokermesh or otherwise), which I do not, then there does not appear to have been any opportunity for them to generate the normal brokerage bid offer spreads which is the only reason why a real IDB would participate in a real brokerage platform.

245. In conclusion, there is no way in which this Brokermesh can be considered a genuine liquidity finding venue and these facts further support the conclusion that these transactions were simply fictitious and that all the supposed participants were in league with Solo, which was organizing and coordinating all of the false bookings and tax reclaims.

## **5. The Terms of the Stock Loan Agreements are Highly Irregular for Multiple Reasons**

246. First, for the Solo transaction discussed above, the stock loan confirmation states that Aquila, the borrower, would pay 100% of dividends back to the lender, Delvan.<sup>200</sup> However, since the stock loan

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<sup>199</sup> For example, Appendix D shows that the ADTV of Novozymes A/S shares used in the Roadcraft NZYMB 2015 transaction was approx. 524,000 shares per day when the number of shares traded by the participants was 681,437 shares.

<sup>200</sup> ELYSIUM-01487895.